

E-FILED 07-19-2011

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JEANNY LUONG TO,

No. C11-01696 HRL

Petitioner,
v.

**ORDER TO AMEND PETITIONER'S
CERTIFICATE OF NATURALIZATION**

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, ET AL.,

[Re: Docket No. 1]

Respondents.

Petitioner Jeanny Luong To ("To") became a naturalized citizen of the United States in 1999. Now before the court is To's petition to amend her Certificate of Naturalization ("Certificate") to reflect her actual birth date, April 17, 1938. Petitioner asserts that her Certificate incorrectly displays the year 1945 as her year of birth, the result of an alleged clerical error. Respondent United States Citizenship and Immigration Services ("Service") does not oppose this request.

This court has jurisdiction to order an amendment to a Certificate of Naturalization when the mistake was the result of a clerical error, oversight, or omission. See, e.g. In re Lee, No. C 06-80150-MISC MJJ, 2007 WL 926501, at *2 (N.D. Cal. Mar 26, 2007) (citing 8 C.F.R. § 334.16(b) and §338.5(e)). The petitioner bears the burden of showing that the date on her Certificate is incorrect and that April 17, 1938, is her correct date of birth. Kouanchao v. U.S. Citizenship and Immigration Services, 358 F. Supp. 2d 837, 838 (D. Minn. 2005).

Petitioner has provided ample evidence showing that the mistake on her Certificate is the result of clerical error. She alleges that a clerical error was made while she was in a Malaysian refugee camp in 1978 when her birth date was recorded. Petition at ¶ 11. Due to exigent circumstances, she was unable to amend her reported birth date prior to emigrating to the United States in 1979 and the error resulted in the issuance of several United States documents with the same incorrect birth date. See id. In 1999, shortly after To's naturalization, she petitioned the Superior Court for Santa Clara County to allow her to update several forms of state identification that resulted from the alleged clerical error, which the court granted. See Declaration of Jeanny Luong To ("To Decl."), Ex. E. Many of petitioner's documents were subsequently updated, but not her Certificate. To later attempted to fix this error in 2009 by filing the appropriate N-565 form, but it was denied by the Service and is currently pending. See To Decl., Ex. B. To also filed a request to change her recorded birth date with the Social Security Administration, which was approved. See Petition at § 18.

SO ORDERED.

HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

United States District Court

For the Northern District of California

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